

**UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS**

MARJORIE PERRIN,)	
)	
Appellant)	
)	
v.)	Vet. App. No. 18-5569
)	
ROBERT L. WILKIE,)	
Secretary of Veterans Affairs,)	
)	
Appellee)	

JOINT MOTION FOR REMAND

Pursuant to U.S. Vet. App. R. 27 and 45(g)(2), the parties respectfully move the Court to vacate and remand the June 21, 2018, Board of Veterans' Appeals (Board) decision denying Appellant entitlement to service connection for the Veteran's cause of death. Record Before the Agency (R.) at 1-10.

BASIS FOR REMAND

The parties agree that the Board erred when it provided an inadequate statement of reasons or bases to support its determination that Appellant was not exposed to asbestos in services because the Board did not address all the evidence of record related to Appellant's possible in-service exposure.

Under 38 U.S.C. § 7104(d)(1), the Board must provide a written statement of "the reasons or bases for [its] findings and conclusions, on all material issues of fact and law presented on the record." The Board's statement should "identify those findings [the Board] deems crucial to its decision and account for the evidence which it finds to be persuasive or unpersuasive." *Gilbert v. Derwinski*, 1

Vet.App. 49, 57 (1990). The statement is adequate if it is “clear enough to permit effective judicial review.” *Id.* The Board must analyze the probative value of the evidence and explain the reasons or bases for its rejection of evidence materially favorable to the claimant. *Caluza v. Brown*, 7 Vet.App. 498, 506 (1995), *aff’d*, 78 F.3d 604 (Fed. Cir. 1996) (per curiam).

The parties note that there were three pieces of evidence related to the Veteran’s possible exposure to asbestos in service. One, Appellant’s statement that reported that the Veteran talked about performing repair work on the trucks he drove while he was in the Army. R. at 320. Two, the Veteran’s DD-214 also indicated that the Veteran had six months of auto mechanic training in service in 1944. R. at 373; see R. at 21 (Separation Qualification Record). Finally, Appellant submitted an article explaining some of the reasons for the high risk of asbestos exposure in the automotive industry. R. at 321. While the Board noted Appellant’s lay statements, the Board did not discuss the Veteran’s training noted on his DD-214 or the article about asbestos exposure in the automotive industry. On remand, the Board should provide an adequate statement of reasons or bases that addresses all the evidence in support of the Veteran’s exposure to asbestos to support its determination as to whether the Veteran was exposed to asbestos in service.

The parties agree that this joint motion and its language are the product of the parties’ negotiations. The Secretary further notes that any statements made herein shall not be construed as statements of policy or the interpretation of any

statute, regulation, or policy by the Secretary. Appellant also notes that any statements made herein shall not be construed as a waiver as to any rights or VA duties under the law as to the matter being remanded except the parties' right to appeal the Court's order implementing this JMR. The parties agree to unequivocally waive any right to appeal the Court's order on this JMR and respectfully ask that the Court enter mandate upon the granting of this motion.

The Board decision should be vacated and the appeal remanded for readjudication consistent with the foregoing. A copy of this motion for remand should be associated with the claims file, along with the Court's order granting this motion.

On remand, Appellant is entitled to submit additional evidence and argument in support of her claim. *Kutscherousky v. West*, 12 Vet.App. 369, 372 (1999); accord *Clark v. O'Rourke*, 30 Vet. App. 92 (2018) On remand, the Board should afford Appellant full assistance with her claim, reexamine the evidence of record, seek any other evidence necessary to support its decision, and issue a timely and well-supported decision. See *Fletcher v. Derwinski*, 1 Vet.App. 394, 397 (1991). Before relying on any additional evidence the Board should afford Appellant notice and opportunity to respond, including the opportunity to submit additional argument or evidence in response. See *Thurber v. Brown*, 5 Vet.App. 119, 126 (1993).

"A remand is meant to entail a critical examination of the justification for the decision." *Kahana v. Shinseki*, 24 Vet.App. 428, 437 (2011) (internal citation omitted). A "remand by this Court or the Board confers on the veteran or other

claimant, as a matter of law, the right to compliance with the remand orders” and imposes upon the Secretary a “concomitant duty to ensure compliance with the terms of the remand, either personally or as ‘the head of the Department.’” *Stegall v. West*, 11 Vet. App. 268, 271 (1998). The terms of this JMR are enforceable, and Appellant has enforceable rights with respect to its terms. See *Forcier v. Nicholson*, 19 Vet. App. 414, 425 (2006). The Board must set forth adequate reasons or bases for its findings and conclusions on all material issues of fact and law reasonably raised by the evidence in any subsequent decision. See 38 U.S.C. § 7104(d)(1); *Gilbert v. Derwinski*, 1 Vet.App. 49, 57 (1990). The Board is required to provide this claim expeditious treatment. 38 U.S.C. §§ 5109B and 7112.

WHEREFORE, the parties respectfully move the Court to vacate and to remand the June 21, 2018, Board decision denying Appellant entitlement to service connection for the Veteran’s cause of death.

Respectfully submitted,

FOR APPELLANT

Dated: 4/26/2019

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